IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 16TH NOVEMBER 2007 / 25TH KARTHIKA 1929

WP(C).No. 26477 of 2006(B)

PETITIONER:

THE DIRECTOR OF FISHERIES,
VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER

RESPONDENT:

LILLY ANTONY, KAYATHURUTHIL,
NEENDAKARA P.O., KOLLAM.

BY ADV. SRI.M.DINESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.26477/2006 B

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE COMPLAINT DTD. 05/05/2005.**

EXT.P2: **COPY OF THE STATEMENT FILED BY THE PETITIONER.**

EXT.P3: **COPY OF THE ORDER.**

/TRUE COPY/

P.S.TO JUDGE

KSS

V.GIRI, J.

W.P.(C).No.26477 of 2006 B

Dated this the 16th day of November, 2007.

JUDGMENT

The Director of Fisheries has filed this writ petition challenging Ext.P3 order passed by the Lok Ayuktha. The first respondent preferred a complaint before the Lok Ayuktha stating that she had worked in the Peeling Section of Neendakara Government Ice & Cold Storage Plant under the Fisheries Department from 27.09.1961 and in the year 1986, her services were terminated after granting Provident Fund and Gratuity. Apparently, the Kerala Fisheries Corporation, was wound up in 1986. The petitioner requested for pension. But, it was not given. Ext.P1 is the complaint she had preferred before the Lok Ayuktha. The Director of Fisheries filed Ext.P2 statement before the Lok Ayuktha pointing out that the complainant had worked as a part-time worker in the Peeling Section of Neendakara Government Ice & Cold Storage Plant, under the control of the Fisheries Corporation till 1986. Consequent upon the winding up of the Corporation, the services of the part-time workers were terminated by granting the eligible

retirement benefits, gratuity, provident fund etc. In 1986, no pensionary benefits was admissible to the part-time Workers and hence such benefits were not granted to them.

2. The Lok Ayuktha, under Ext.P3 order, proceeded to hold that if the petitioner had continued in service, she would have superannuated only at the age 70 years. Therefore, due to the premature termination of the services of the complainant brought about by the winding up of the Corporation, she cannot be denied the pensionary benefits. Consequently, a direction was issued to compute pension and sanction it as if she had continued till the age of 70 years. Ext.P3 has been challenged in this writ petition.

3. Learned senior Government Pleader Sri.Nandakumar, submits that Ext.P3 is vitiated on account of the fact that Lok Ayuktha has no jurisdiction to pass an order in the nature of Ext.P3, which contains an enforceable direction as if it is a writ of mandamus. He refers to the decision of this court in **State of Kerala v. Bernad {2002(2) K.L.T. 254}.** He further contends that Ext.P1

complaint is clearly barred by limitation, in circumstances where the services of the complainant were terminated in 1986 consequent upon the winding up of the Fisheries Corporation.

4. The complaint was preferred in the year 2005. The period of limitation prescribed under the Act for preferring a complaint is five years from the date of accrual of cause of action and in the circumstances Ext.P1 was barred by limitation. It is also contended that the petitioner's services were terminated consequent upon the winding up of the Fisheries Corporation and in the circumstances, there was no post to accommodate the petitioner, even if she was entitled to continue till the age of 70 years as now found by the Lok Ayuktha. Therefore, the direction to deem as if she had continued till the age of 70 and consequent thereupon to comply with the directions given by the Lok Ayuktha for sanction and disbursal of Retirement benefits in relation to the petitioner, who had already been disengaged in 1986 is unsustainable. In my view, it may not be necessary to consider the merits of the contentions raised by

the learned Senior Government Pleader as regards the veracity of the claim made before the Lok Ayuktha and also as regards the bar of limitation, insofar as the cognizance of the complaint is concerned. The direction, which is impugned in the present case, is similar to the one which was considered by this court in the of **Saralakumari**. As a matter of fact, this court had, in the aforementioned decision, followed the earlier view taken by the Division Bench in **State of Kerala v. Bernad {2002(2) K.L.T. 254}.** In the light of the law laid down by the Division Bench in **Bernad**'s case and followed by this court **George A.T. & ors. v. Saralakumari P. & Another {2007(4) ILR Kerala 692}**, I am of the view that Ext.P3 order is unsustainable.

In the circumstances, the writ petition is allowed and Ext.P3 order is quashed.

Sd/-

(V.GIRI)

JUDGE

sk/

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